

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIROMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: City of Providence

File nos.: Dam State I.D. 093

AAD No.: 12-008/DE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection (the "RIDEM") and the City of Providence (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation (the "NOV") issued to the Respondent by the RIDEM on or about November 21, 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is a dam identified as Canada Upper Pond Dam, State I.D. 093, located immediately east of Route 146, north of the intersection of Route 146 and Branch Avenue and west of Lakeside Street in the City of Providence (the "Dam 093").
- (2) WHEREAS, the Respondent owns Dam 093.
- (3) WHEREAS, on or about November 21, 2012, the RIDEM issued a NOV to the Respondent for Dam 093 alleging certain violations of the RIDEM's *Rules and Regulations for Dam Safety* (the "Dam Safety Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV issued for Dam 093.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV issued for Dam 093 and to effect a timely and amicable resolution of the NOV, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (6) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's Dam Safety Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R. I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R. I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
 - a. By January 31, 2015, the Respondent shall submit an application (the “Application”) to the RIDEM that is prepared by a registered professional engineer fully licensed in the State of Rhode Island, who is experienced with the design, construction and repair of dams, to repair the low level outlets for Dam 093.
 - b. The Application is subject to RIDEM review and approval. Upon review, RIDEM shall provide written notification to the Respondent either granting formal approval (the “Approval”) or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to RIDEM a modified application or additional information necessary to correct the deficiencies.
 - c. By October 1, 2015, the Respondent shall complete all work in accordance with the Approval.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with any of the items specified in Section C(4) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues, except that the RIDEM may, for

good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).

- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, the RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV's.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

(401) 222-1360 ext. 7400

Richard M. Bianculli, Jr., Esq.
RIDEM Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908-5767

(401) 22-4700 ext. 2023

Jeffrey M. Padwa, City Solicitor
City Solicitor's Office
City of Providence
444 Westminister Street, Suite 220
Providence, RI 02903

(401) 680-5333

Robert F. McMahon
Superintendent, Parks Department
Boathouse
1000 Elmwood Ave.
Providence, RI 02905

(401) 785-9490

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The RIDEM may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to the RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For the City of Providence

Alan Sepe

Dated: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

Approved as to form and correctness:

Jeffrey M. Padwa, City Solicitor